



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0509; FRL 10015-50-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), the United States Environmental Protection Agency (“EPA”) gives notice of a proposed consent decree in *Our Children’s Earth Foundation v. Wheeler*, No. 4:20-cv-00396-JSW (N.D. Cal.). In this litigation, Our Children’s Earth Foundation (“OCEF”) alleged that the Administrator of EPA failed to perform certain non-discretionary duties to timely respond, in accordance with the Act, to numerous state implementation plan (“SIP”) submittals from the State of California. The proposed consent decree would establish deadlines for EPA to take action in response to these California SIP submittals. The proposed consent decree does not require EPA to take any specific, particular action in response to the submittals.

**DATES:** Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0509, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional

information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Charles Starrs, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-1996; email address: [starrs.charles@epa.gov](mailto:starrs.charles@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2020-0509) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification

number then select “search.”

## **II. Additional Information about the Proposed Consent Decree.**

The proposed consent decree would fully resolve two lawsuits filed by OCEF seeking to compel the Administrator to take action, in accordance with CAA section 110, 42 U.S.C. 7410, to respond to numerous California SIP submittals. Both lawsuits were filed in the United States District Court for the Northern District of California: the first, *OCEF v. Wheeler*, No. 4:20-cv-00396-JSW, was filed on January 20, 2020 and the second, *OCEF v. Wheeler*, No. 3:20-cv-01380-WHA, was filed on February 24, 2020. Subsequently, by Order dated June 15, 2020, both cases were consolidated in one action, *OCEF v. Wheeler*, No. 4:20-cv-00396-JSW.

In the consolidated action, OCEF alleges that the State of California made 72 specifically-identified SIP submittals over a period of years (the majority from 2016-2018) and that EPA has failed to meet its non-discretionary duty to take timely action in response to each of those submittals. In the ordinary course of its administrative action, EPA continues to evaluate and take action on SIP submittals from all the states, including the State of California, and does not necessarily suspend such on-going action because of pending litigation, such as the consolidated action that is the subject of the proposed consent decree. In fact, during the pendency of this litigation, EPA has taken final action on some of the California SIP submittals originally at issue in the litigation.<sup>1</sup>

Under the terms of the proposed consent decree, EPA shall, in accordance with a stated schedule, take final action in response to all the California SIP submittals identified in the litigation that are still at issue (i.e. that EPA has not otherwise taken action on during the pending litigation). The schedule requires EPA to take such action on a certain specified number of the

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<sup>1</sup> See, for example, 85 FR 57714 (September 16, 2020), 85 FR 57703 (September 16, 2020). and 85 FR 57712 (September 16, 2020).

California SIP submittals that are at issue by each of four successive dates—December 22, 2020, September 30, 2021, September 30, 2022, and June 30, 2023—such that by the last such date EPA will have taken action on all the submittals. In some instances, the schedule specifically identifies particular SIP submittals in response to which EPA must take action by a specified date, but otherwise, the schedule states that EPA must take action on a minimum number of submittals by each date. It is possible, while this litigation is pending and before the proposed consent decree is final, as EPA continues in the ordinary course of its administrative activities, that EPA may take action on more of the California SIP submittals presently at issue (and which the proposed consent decree currently addresses). In that event, the parties subsequently may slightly adjust the proposed consent decree to ensure that the consent decree is limited to the remaining outstanding SIP submittals. The structure and essence of the proposed consent decree would be unchanged, though, and EPA will be required to take action on all of the remaining SIP submittals at issue in accordance with the prescribed schedule.<sup>2</sup>

In addition to setting out a schedule for EPA to take action on the California SIP submittals at issue, the proposed consent decree provides that if California withdraws any of the submittals, EPA no longer has an obligation (under the proposed consent decree) to take action in response to such withdrawn submittal(s). The proposed consent decree also requires that, as EPA takes action in response to the California SIP submittals at issue, EPA shall send the actions to the Office of the Federal Register for publication in the Federal Register. See the proposed consent decree in the docket for other terms and conditions.

For a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the

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<sup>2</sup> EPA would not regard any such future adjustments (if any) to the proposed consent decree as material and does not intend, in such event, to give further notice of the proposed consent decree.

Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

### **III. Additional Information about Commenting on the Proposed Consent Decree.**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0509, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows

EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

**Gautam Srinivasan,**

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